

MK Murphy&King

THEODORE J. FOLKMAN
Direct Dial: 617-226-3451
Direct Fax: 617-305-0651
Email: tjf@murphyking.com

May 24, 2012

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

U.S. Immigration Customs Enforcement
Office of the Principal Legal Advisor
U.S. Department of Homeland Security
Freedom of Information Office
500 12th Street S.W., Stop 5009
Washington, D.C. 20536-5009

re: *Appeal from Denial of FOIA Request*
2012FOIA7039

Dear Sir or Madam:

This is an appeal pursuant to 6 C.F.R. § 5.9 of an adverse determination denying the above-referenced FOIA request.

BACKGROUND

A. The Perlitz Case

Douglas Perlitz was indicted in September 2009 on seven charges of traveling with intent to engage in illicit sexual conduct under 18 U.S.C. § 2423(b) and three counts of illicit sexual conduct in foreign places under 18 U.S.C. § 2423(c). The indictment arose out of the alleged abuse of several Haitian boys who were students at Project Pierre Toussaint, a boys' school in Cap-Haitien, Haiti which, according to the indictment, Mr. Perlitz founded in 1997. Although the Court granted a motion to dismiss a second superseding indictment against Mr. Perlitz on grounds of improper venue, Mr. Perlitz ultimately reached a plea bargain with the government under which he pled guilty to an information charging him with one count of violating § 2423(b) and the government dismissed the remaining charges. In December 2010, Mr. Perlitz was sentenced to imprisonment for a term of 235 months, with supervised release for a term of 120 months and restitution to his victims. On July 15, 2011, the Court entered a restitution order

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Office of Principal Legal Advisor
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providing for a pro rata distribution of approximately \$49,000 into bank accounts to be established for sixteen victims.

B. The Requests

I submitted two related FOIA requests, one on February 8, 2012 and one on February 9, 2012.¹ The February 8 request sought copies of records concerning the distribution of restitution to Mr. Perlitz's victims and records concerning statements made by Mr. Perlitz's victims. The February 9 request expanded on the request concerning victim statements and also sought statements made by other students or staff members at PPT and statements made by Cyrus Silbert, a Haitian radio personality who reported on the events at PPT.

C. The Adverse Decision

The FOIA Officer's adverse determination was dated May 16, 2012.² The adverse determination, on its face, relates only to the February 8 request.

The sole basis for the FOIA Officer's decision to withhold the records was 5 U.S.C. § 552(b)(7)(A), which exempts from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings." The FOIA Officer determined that all of the requested records fell within this exemption because the records "relate[] to an ongoing law enforcement investigation."

ARGUMENT

A. The FOIA Officer Has Not Responded To The Entirety Of The FOIA Requests.

As an initial matter, the FOIA Officer failed to make a determination, favorable or adverse, on the February 9 FOIA request. ICE was required to notify me in writing of its determination on the February 9 request, whether favorable or adverse. *See* 5 C.F.R. § 5.6(b), (c).

¹ The requests are attached as Exhibits 1 and 2, respectively.

² The Adverse Determination is attached as Exhibit 3.



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B. ICE Has Not Justified Its Assertion Of Exemption 7(a).

The factual basis for the FOIA Officer's assertion that the records in question "relates to an ongoing law enforcement investigation" is unclear. Mr. Perlitz pled guilty to one count of violating 18 U.S.C. § 2423(b) and was convicted and sentenced.³ The plea agreement "satisf[ies] the federal criminal liability of [Mr. Perlitz] in the District of Connecticut, Eastern District of New York, District of Colorado, Southern District of Florida, Northern District of California, and the Eastern District of Michigan, as a result of his participation in traveling to Haiti for the purpose of engaging in illicit sexual conduct with minors in Haiti, and any subsequent illicit sexual conduct after such travel, from 2001 through and including 2008, which formed the basis of the Second Superseding Indictment ..." (Plea Agreement at 9-10).⁴ Given the breadth of this agreement by the government, I am unaware of any additional federal criminal charges that could be brought against Mr. Perlitz, nor does it seem likely, given that Mr. Perlitz is serving a very severe prison sentence, that the government is continuing to consider additional charges against Mr. Perlitz. The government has represented to my colleague, Timothy P. O'Neill, on several occasions that our client, the Rev. Father Paul E. Carrier, S.J., was a subject but not a target of the investigation. In short, we are unsure whom the government could be investigating or for what alleged crimes. ICE's mere assertion of an ongoing investigation is insufficient, in light of these facts, to sustain its objection, particularly in light of Mr. Perlitz's plea and conviction. *See Durrani v. Dept. of Justice*, 607 F. Supp. 2d 77, 89-90 (D.D.C. 2009) (ICE failed to sustain its burden of asserting Exemption 7(a) where the criminal proceedings had apparently been concluded).

C. Even If There Were An Ongoing Criminal Investigation, Records Relating To Restitution Are Not Within the Exemption.

Items 1 and 3 of the February 8 request concerned "the distribution of restitution to the victims in *United States v. Perlitz* ... including but not limited to records concerning the identity of the recipients and the amounts disbursed, the method used to disburse the restitution to the recipients, and the recipients' reactions to receipt of the restitution" and communications with various financial institutions that we believed helped to facilitate the restitution payments. The restitution payments necessarily do not relate to a criminal investigation. Rather, as reflected in

³ The Judgment in the criminal case against Mr. Perlitz is attached as Exhibit 4.

⁴ The Plea Agreement is attached as Exhibit 5.



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the transcript of the March 7, 2011 hearing on restitution, the government, after the case had concluded, proposed sending Rod Khattabi, an ICE special agent, to Haiti to meet with the victims and distribute the restitution funds to them. (Tr. at 8).⁵ The government asserted that a visit by Special Agent Khattabi was the "easiest and quickest way" to get funds to Mr. Perlitz's victims. (Tr. at 15). Special Agent Khattabi coordinated with the relevant financial institutions and apparently traveled to Haiti to arrange for deposit and distribution of the funds.⁶ Special Agent Khattabi's efforts were not investigatory. They followed the conclusion of the criminal proceeding against Mr. Perlitz and were not related to any prospective criminal proceedings against anyone else. In short, Exemption 7(a) simply does not apply, on its face, to records concerning Special Agent Khattabi's work, performed at the request of the Court, to see to it that the restitutionary portion of Mr. Perlitz's sentence was carried out in an effective way.

CONCLUSION

For these reasons, I respectfully request that you reverse the adverse determination and provide me with access to the records requested. Would you please let me know if you need additional information from me or if you think it would be useful to discuss the matter further.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Folkman', written over a horizontal line.

Theodore J. Folkman

626692

cc: Timothy P. O'Neill, Esq.
Amanda M. Rettig, Esq.

⁵ A partial transcript of the March 7 hearing is attached as Exhibit 6.

⁶ A transcript of a telephonic hearing held on July 7, 2011 discussing these matters is attached as Exhibit 7. A copy of the restitution order is attached as Exhibit 8.

EXHIBIT 1



THEODORE J. FOLKMAN
Direct Dial: 617-226-3451
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Email: tjf@murphyking.com

February 8, 2012

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

U.S. Immigration and Customs Enforcement
FOIA Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009

re: Freedom of Information Act Request

Dear Sir or Madam:

I represent Fr. Paul E. Carrier, S.J. This letter is a request under the Freedom of Information Act, 5 U.S.C. § 552.

I request that you provide me with copies of the following records:

1. All reports, correspondence, memoranda, notes, emails, or other records concerning the distribution of restitution to the victims in *United States v. Perlitz*, Crim. A. No. 09-CR-207 (D. Conn.), including but not limited to records concerning the identity of the recipients and the amounts disbursed, the method used to disburse the restitution to the recipients, and the recipients' reactions to receipt of the restitution.
2. All reports, correspondence, memoranda, notes, emails, or other records concerning statements made by the victims in *United States v. Perlitz*, Crim. A. No. 09-CR-207 (D. Conn.).
3. All reports, correspondence, memoranda, notes, emails, or other records concerning communications with any officer, agent, employee, or other representative of Sogebank, Bank of America, or JP Morgan Chase & Co., or their affiliates, concerning restitution to the victims in *United States v. Perlitz*, Crim. A. No. 09-CR-207 (D. Conn.).

This request calls for records from 2008 to the present.

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www.murphyking.com	Tel: 617-423-0400	Tel: 202-403-2100	Tel: 212-631-0223
	Fax: 617-423-0498	Fax: 202-429-4380	Fax: 212-624-0223



U.S. Immigration and Customs Enforcement
FOIA Office
February 8, 2012
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In order to assist you in locating relevant records, but without limiting the scope of this request, I provide the following background information. In *United States v. Perlitz*, Crim. A. No. 09-CR-207 (D. Conn.), the defendant, Douglas Perlitz, was sentenced for violation 18 U.S.C. § 2423(b). His sentence included a requirement of restitution to the victims of his crimes, who were Haitians living in Haiti. Special Agent Rod Khattabi of the bureau of Immigration and Customs Enforcement assisted the Court and the government in distributing the restitution to the victims in Haiti and reported to the Court at a telephonic hearing held on July 7, 2011.

To the best of my information and belief, the victims are neither citizens of the United States nor legal permanent residents. Although the victims' names are sealed in the Court's records, information I have reviewed in a related civil action leads me to believe that the victims included Noel Smith, Robens Pierre, Francilien Jean-Charles, Peterson Gedeus, Edier Dorsainvil, and Donald Cadet. The victims may also have included Fredelin Legrand, Luckson Mesidor, Thony Vall, Peterson Eugene, Benson Alcime, Fredlin Fils-Aime, James Mathieu, Denis Mesamour, Schoubert Hedouville, and Joseph Jean-Charles.

I agree to pay all costs incurred for search, duplication, and review of materials up to \$25. If you expect the costs of complying with this request to exceed that amount, would you please contact me by telephone or email.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Folkman', written over a horizontal line.

Theodore J. Folkman

618359

cc: Timothy P. O'Neill, Esq.
Amanda M. Rettig, Esq.

EXHIBIT 2



THEODORE J. FOLKMAN
Direct Dial: 617-226-3451
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February 9, 2012

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

U.S. Immigration and Customs Enforcement
FOIA Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009

re: Freedom of Information Act Request

Dear Sir or Madam:

I represent Fr. Paul E. Carrier, S.J. This letter is a request under the Freedom of Information Act, 5 U.S.C. § 552.

I request that you provide me with copies of the following records:

1. All reports, correspondence, memoranda, notes, emails, or other records concerning statements made by the victims in *United States v. Perlitz*, Crim. A. No. 09-CR-207 (D. Conn.) prior to December 23, 2010, including but not limited to statements concerning the victims' assertions that they were sexually abused by Douglas Perlitz or statements concerning Father Paul E. Carrier, S.J.
2. All reports, correspondence, memoranda, notes, emails, or other records concerning statements by other students or staff members at Project Pierre Toussaint prior to December 23, 2010 concerning Mr. Perlitz or Father Carrier.
3. All reports, correspondence, memoranda, notes, emails, or other records concerning statements made by Cyrus Silbert.

This request calls for records you obtained or created from 2008 through December 23, 2010.

In order to assist you in locating relevant records, but without limiting the scope of this request, I provide the following background information. In *United States v. Perlitz*, Crim. A.

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U.S. Immigration and Customs Enforcement
FOIA Office
February 9, 2012
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No. 09-CR-207 (D. Conn.), the defendant, Douglas Perlitz, was sentenced for violation 18 U.S.C. § 2423(b). I understand that Special Agent Rod Khattabi was involved in the investigation of Mr. Perlitz's crime.

To the best of my information and belief, the victims are neither citizens of the United States nor legal permanent residents. Although the victims' names are sealed in the Court's records, information I have reviewed in a related civil action leads me to believe that the victims included Noel Smith, Robens Pierre, Francilien Jean-Charles, Peterson Gedeus, Edier Dorsainvil, and Donald Cadet. The victims may also have included Fredelin Legrand, Luckson Mesidor, Thony Vall, Peterson Eugene, Benson Alcime, Fredlin Fils-Aime, James Mathieu, Denis Mesamour, Schoubert Hedouville, and Joseph Jean-Charles.

Please note that the persons named above as victims of Mr. Perlitz are plaintiffs in a civil action against my client and others who, by suing on a theory of negligent supervision of Mr. Perlitz and on other theories, have put their assertions of sexual abuse in issue. Moreover, through their lawyers, they have asked the judge in the criminal case against Mr. Perlitz to give my client and other defendants in the civil case access to videotaped statements that they made concerning their assertions of abuse in the criminal proceeding (I enclose a copy of the judge's order for your reference and refer you to the last paragraph of page 6 of that order). Therefore, I do not believe that any considerations of the personal privacy of the victims prevents disclosure of the requested records to me.

To the extent you contend that any portion of a record within the scope of this request need not be released to me under 5 U.S.C. § 552(b)(7) or any other exemption from disclosure, please produce all reasonably segregable portions of the record.

I agree to pay all costs incurred for search, duplication, and review of materials up to \$25. If you expect the costs of complying with this request to exceed that amount, would you please contact me by telephone or email.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Theodore J. Folkman', written in black ink.

Theodore J. Folkman



U.S. Immigration and Customs Enforcement
FOIA Office
February 9, 2012
Page 3

618484

cc: Timothy P. O'Neill, Esq.
Amanda M. Rettig, Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

v.

DOUGLAS PERLITZ

Case No. 3:09CR207(JBA)

**PROTECTIVE ORDER REGARDING LIMITED DISSEMINATION OF MATERIALS
TO COUNSEL FOR VICTIMS OF DOUGLAS PERLITZ**

WHEREAS, Defendant Douglas Perlitz was convicted of violating 18 U.S.C. §2423(b), Travel With Intent To Engage In Illicit Sexual Conduct, and as this Court has been informed that many of the victims of childhood sexual abuse admittedly or allegedly perpetrated by Defendant Douglas Perlitz have filed or will be filing civil actions seeking damages from Defendant Douglas Perlitz, others who may have aided and abetted Defendant Douglas Perlitz, others who negligently supervised Defendant Douglas Perlitz, others who breached their fiduciary duties to the victims, or others who may otherwise be civilly liable for the harm caused by the sexually abusive conduct of Defendant Douglas Perlitz;

IT IS HEREBY ORDERED, pursuant to 18 U.S.C. § 3509(d)(3) and Rule 16(d) of the Federal Rules of Criminal Procedure, that this Court's Protective Order, entered on April 5, 2010, is amended to provide that copies of the video-taped statements of any child witness, or witness who provided statements about sexual abuse experienced when the witness was a child

◇ (because they identify the child witness and/or involve discussions of sexual abuse the witnesses allegedly suffered as children), may be provided to counsel for such witnesses;

IT IS FURTHER ORDERED THAT such witnesses in the presence of members of the witnesses' counsel's team (counsel, paralegals, investigators, experts, litigation support personnel and secretarial staff) may view the above referenced video-taped statements, but will not be provided to the witnesses and will remain at all times in the control and custody of witnesses' counsel and those individuals directly working on the witnesses' counsel team (paralegals, investigators, experts, litigation support personnel and secretarial staff);

IT IS FURTHER ORDERED THAT, except as permitted by Federal Rule of Criminal Procedure 6(e), this Order, applicable Federal Rules of Civil Procedure, or other court order, witnesses' counsel shall not disclose any videotapes or transcripts or the contents thereof, except that, for the sole purposes of preparing civil pleadings, motions, memoranda, or affidavits to be filed in civil actions seeking damages for the harm caused by the admitted or alleged sexually abusive conduct of Defendant Douglas Perlitz or preparing for civil trials in such actions:

a. witnesses' counsel may show video-tapes and transcripts to a witness who has filed a civil claim seeking damages arising from childhood sexual abuse admittedly or allegedly perpetrated by Defendant Douglas Perlitz;

◇

◇ b. witnesses' counsel can show any prospective witness his/her own video-tape or transcript, but may not show these materials to any other witness (except as provided in paragraphs (a) and (d);

c. witnesses' counsel may provide any prospective witness with a copy of his or her own testimony;

d. witnesses' counsel may permit secretaries, clerical workers, paralegals, investigators hired by witnesses' counsel, and experts retained to assist in the preparation for trial of any civil action seeking damages for the harm caused by the admitted or alleged sexually abusive conduct of Defendant Douglas Perlitz to view the video-tapes and transcripts solely for the purpose of assisting witnesses' counsel to prepare for trial of any civil action seeking damages for the harm caused by the admitted or alleged sexually abusive conduct of Defendant Douglas Perlitz.

IT IS FURTHER ORDERED THAT, each witness or potential witness to whom video-tapes or transcripts have been shown or their contents disclosed pursuant to this Order, shall not discuss with or disclose the contents thereof to anyone other than (a) members of the witnesses' counsel, team (counsel, paralegals, investigators, litigation support personnel, investigators hired by witnesses' counsel, or secretarial staff) who disclosed such materials or (b) the witness's counsel, who shall not be permitted to further disclose such material;

◇

IT IS FURTHER ORDERED THAT witnesses' counsel shall take appropriate measures to ensure that each person to whom the witnesses' counsel discloses material covered by this Order, including representatives and employees of witnesses' counsel, is provided with a copy of this protective order and understands the limited purpose for which the material is being disclosed and the prohibition against further dissemination;

IT IS FURTHER ORDERED THAT any notes or recorded notations of any kind that witnesses' counsel, their secretaries, clerical workers, paralegals, investigators, or experts may make relating to the contents of the video-tapes or transcripts shall not be shown to anyone except their own client, and then only for the sole purpose of litigating the filed civil actions seeking damages arising from the admitted or alleged childhood sexual abuse perpetrated by Defendant Douglas Perlitz, and all members of the witnesses' counsel team shall maintain the confidentiality of these materials pursuant to the terms of this Order after the referenced civil actions are disposed of by trial, appeal, if any, or other resolution of the referenced civil actions;

IT IS FURTHER ORDERED THAT all video-tapes and transcripts disclosed pursuant to this Order and all copies thereof shall either be promptly destroyed or returned to the government after the referenced civil actions are disposed of by final, non-appealable judgments or other resolution of the referenced civil actions;

◇ IT IS FURTHER ORDERED THAT, in the event the terms of this Order are violated, witnesses' counsel shall advise the court immediately of the nature and circumstances of such violation;

IT IS FURTHER ORDERED THAT nothing contained in this Order shall restrict or prevent any party from citing, quoting or using any materials in civil pleadings, motions, memoranda, or affidavits filed in a civil action seeking damages for the harm caused by the admitted or alleged sexually abusive conduct of Defendant Douglas Perlitz, or citing, quoting or using any materials at a civil trial to the extent otherwise permitted by law, provided such filings are made under seal where appropriate;

IT IS FURTHER ORDERED THAT nothing in this Order shall preclude the government, the defendant, or the witnesses from seeking a further protective order pursuant to Rule 16(d) as to particular items of discovery material;

IT IS FURTHER ORDERED THAT nothing herein shall impose any restrictions on the use or disclosure by a witness of information or materials legally obtained by such witness independent of the above referenced video-taped statements produced pursuant to this Order, whether or not such information or material is also contained in the above referenced video-taped statements or from disclosing his own confidential material as such witness deems appropriate;

◇

IT IS FURTHER ORDERED THAT this Order is entered without prejudice to the government's, the defendant's, or the witnesses' right to seek a revision of the Order by appropriate motion to the Court;

IT IS FURTHER ORDERED THAT the provisions of this Court's Protective Order, entered on April 5, 2010, as to Defendant Perlitz remain in full force and effect and are not amended by this Order; e.g. Defendant Perlitz is not to be given copies of the video-taped statements of any child witness, or witness who provided statements about sexual abuse experienced when the witness was a child; and

FINALLY, IT IS ORDERED THAT after a witness files a civil action, the court in which the civil action is pending may issue an order to allow parties to that civil action to have access to the materials produced pursuant to this Order, provided the above protections and limits apply to all parties of said civil action.

SO ORDERED this 20th day of June, 2011, at New Haven, Connecticut.


JANET BOND ARTERTON
UNITED STATES DISTRICT JUDGE

EXHIBIT 3

U.S. Department of Homeland Security
500 12th Street, S.W., STOP 5009
Washington, DC 20536-5009



U.S. Immigration
and Customs
Enforcement

May 16, 2012

THEODORE FOLKMAN
MURPHY & KING
ONE BEACON ST., 21ST FLOOR
BOSTON, MA 02108

Re: 2012FOIA7039

Dear Mr. Folkman:

This is the final response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated February 8, 2012. You have requested records pertaining to statements made by the victims in the case of United States v. Perlitz No. 09-CR-207.

Your request has been processed under the FOIA, 5 U.S.C. § 552.

A search of the ICE Office of Homeland Security Investigations (HSI) for documents responsive to your request revealed that the matter is part of an ongoing investigation and therefore will be withheld in its entirety pursuant to Exemption 7(A) of the FOIA as described below.

FOIA Exemption 7(A) protects from disclosure records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings. I have determined that the information you are seeking relates to an ongoing law enforcement investigation. Therefore, I am withholding all records, documents, and/or other material, which if disclosed prior to completion, could reasonably be expected to interfere with law enforcement proceedings and final agency actions related to those proceedings. Please be advised that once all pending matters are resolved and FOIA Exemption 7(A) is no longer applicable, there may be other exemptions which could protect certain information from disclosure, such as FOIA Exemptions 5, 6, 7(C), 7(D), and 7(E).

You have the right to appeal ICE's withholding determination. Should you wish to do so, send your appeal and a copy of this letter to: U.S. Immigration Customs Enforcement, Office of Principal Legal Advisor, U.S. Department of Homeland Security, Freedom of Information Office, 500 12th Street, S.W., Stop 5009 Washington, D.C. 20536-5009, following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Your appeal must be received within 60 days of the date of this letter. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting

Case 1:12-cv-11244-DPW Document 1-6 Filed 07/10/12 Page 20 of 77
access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

Provisions of the FOIA and Privacy Act allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.¹

If you need to contact our office about this matter, please refer to FOIA case number **2012FOIA7039**. This office can be reached at (202) 732-0600 or (866) 633-1182.

Sincerely,


Catrina M. Pavlik-Keenan
FOIA Officer

¹ 6 CFR § 5.11(d)(4).

EXHIBIT 4

AO245b (USDC-CT Rev. 9/07)

UNITED STATES DISTRICT COURT
District of Connecticut

Page 1

UNITED STATES OF AMERICA

v.

DOUGLAS PERLITZ

JUDGMENT IN A CRIMINAL CASE

CASE NO. 3:09CR207 JBA

USM NO: 36435-013

KRISHNA R. PATEL

Assistant United States Attorney

DAVID T. GRUDBERG

Defendant's Attorney

THE DEFENDANT: pled guilty to count one of the information, after waiving indictment.

Accordingly the defendant is adjudicated guilty of the following offense:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Concluded</u>	<u>Count</u>
18 U.S.C. § 2423(b)	TRAVEL WITH INTENT TO ENGAGE IN ILLICIT SEXUAL CONDUCT	4/2008	ONE

The following sentence is imposed pursuant to the Sentencing Reform Act of 1984.

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total of 235 months. The sentence imposed is a upward departure based on aggravating circumstances.

The defendant is remanded to the custody of the United States Marshal.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a total term of 120 months. The Mandatory and Standard Conditions of Supervised Release as attached, are imposed. In addition, the following Special Conditions are imposed:

1. Defendant shall participate in sex offender treatment approved by USPO, and shall abide by the policies and procedures of the program, which may include polygraph testing.
2. Defendant shall not use a computer, Internet-capable device, or similar electronic device to access child pornography, or to communicate with any individual or group promoting sexual relations with children. Defendant is prohibited from possessing or accessing sexually explicit materials involving minors.
3. The defendant shall consent to the use of computer program to monitor suspect computer use on any computer owned or controlled by the defendant. The program(s) used will be designed to identify for USPO any viewing, downloading, uploading, transmitting, or other use of any images or content of a sexual nature (Suspect Computer Use).
4. Defendant shall not associate with children under the age of 18 except in the presence of a responsible adult who is informed about the defendant's background and conviction and who has been approved by USPO.

5. Defendant shall participate in a program for substance and alcohol abuse either in-patient or out-patient approved by USPO. Defendant shall pay all, or a portion of the costs associated with such treatment, based on defendant's ability to pay as determined by USPO.
6. Defendant shall not possess a firearm or other dangerous weapons.
7. Defendant shall provide USPO with access to all requested financial information for the purpose of implementing Restitution Order.
8. Defendant shall notify any third parties of risks that may be occasioned by the defendant's criminal record or personal history and characteristic as directed by USPO who is authorized to confirm such notification.; or if inadequate may make such notification.
9. Defendant is prohibited from holding any position of authority or guidance over children or youth groups involving individuals under the age of 18.
10. Defendant shall not remain in or around playgrounds, schools, malls or arcades where children under the age of 18 congregate. Defendant shall not associate with or have contact with other convicted sex offenders, unless as part of an approved counseling group.
11. Drug testing waived.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments (as follows) or (as noted on the restitution order).

Special Assessment:	\$100.00 DUE IMMEDIATELY
Fine:	WAIVED
Restitution:	RESTITUTION ORDER TO BE EXTENDED UNDER 18 U.S.G. §3664 (d)(5) AFTER A HEARING ON 3/7/11

It is further ordered that the defendant will notify the United States Attorney for this district within 30 days of any change of name, residence or mailing address until all fines, restitution, costs and special assessments imposed by this judgment, are paid.

JUDICIAL RECOMMENDATION TO THE BUREAU OF PRISONS

The Court recommends that the defendant be designated to FMC Devens, for family visitation and participation in the sex offender rehabilitation program.

DECEMBER 21, 2010

Date of Imposition of Sentence

/s/
Janet Bond Arterton
United States District Judge
Date: December 23, 2010

PAGE 3

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

Joseph P. Faughnan
United States Marshal

By _____
Deputy Marshal

**CERTIFIED AS A TRUE COPY
ON THIS DATE _____
ROBERTA D. TABORA, Clerk
BY: _____
Deputy Clerk**

CONDITIONS OF SUPERVISED RELEASE

In addition to the Standard Conditions listed below, the following indicated (■) Mandatory Conditions are imposed:

MANDATORY CONDITIONS

- (1) The defendant shall not commit another federal, state or local offense;
- (2) The defendant shall not unlawfully possess a controlled substance;
- (3) The defendant who is convicted for a domestic violence crime as defined in 18 U.S.C. section 3561(b) for the first time shall attend a public, private, or private non-profit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is available within a 50-mile radius of the legal residence of the defendant;
- (4) The defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on supervised release and at least two periodic drug tests thereafter for use of a controlled substance;
- (5) If a fine is imposed and has not been paid upon release to supervised release, the defendant shall adhere to an installment schedule to pay that fine;
- (6) The defendant shall (A) make restitution in accordance with 18 U.S.C. sections 2248, 2259, 2264, 2327, 3663, 3663A, and 3664; and (B) pay the assessment imposed in accordance with 18 U.S.C. section 3013;
- (7) (A) In a state in which the requirements of the Sex Offender Registration and Notification Act (see 42 U.S.C. §§ 16911 and 16913) do not apply, a defendant convicted of a sexual offense as described in 18 U.S.C. § 4042(c)(4) (Pub. L. 105-119, § 115(a)(8), Nov. 26, 1997) shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any State where the person resides, is employed, carries on a vocation, or is a student; or
(B) In a state in which the requirements of Sex Offender Registration and Notification Act apply, a sex offender shall (i) register, and keep such registration current, where the offender resides, where the offender is an employee, and where the offender is a student, and for the initial registration, a sex offender also shall register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of residence; (ii) provide information required by 42 U.S.C. § 16914; and (iii) keep such registration current for the full registration period as set forth in 42 U.S.C. § 16915;
- (8) The defendant shall cooperate in the collection of a DNA sample from the defendant.

While on supervised release, the defendant shall also comply with all of the following Standard Conditions:

STANDARD CONDITIONS

- (1) The defendant shall not leave the judicial district or other specified geographic area without the permission of the court or probation officer;
- (2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
- (3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- (4) The defendant shall support the defendant's dependents and meet other family responsibilities (including, but not limited to, complying with the terms of any court order or administrative process pursuant to the law of a state, the District of Columbia, or any other possession or territory of the United States requiring payments by the defendant for the support and maintenance of any child or of a child and the parent with whom the child is living);
- (5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- (6) The defendant shall notify the probation officer at least ten days prior to any change of residence or employment;
- (7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance, or any paraphernalia related to any controlled substance, except as prescribed by a physician;
- (8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered, or other places specified by the court;
- (9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- (10) The defendant shall permit a probation officer to visit the defendant at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- (11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- (12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- (13) The defendant shall pay the special assessment imposed or adhere to a court-ordered installment schedule for the payment of the special assessment;
- (14) The defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay any unpaid amount of restitution, fines, or special assessments.

The defendant shall report to the Probation Office in the district to which the defendant is released within 72 hours of release from the custody of the U.S. Bureau of Prisons. Upon a finding of a violation of supervised release, I understand that the court may (1) revoke supervision and impose a term of imprisonment, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____
Defendant

Date

U.S. Probation Officer/Designated Witness

Date

EXHIBIT 5



U.S. Department of Justice

United States District Court
District of Connecticut
FILED AT NEW HAVEN

8/18/10

Robert J. Jacobs, Clerk
By: *[Signature]*
Deputy Clerk

United States Attorney
District of Connecticut

Connecticut Financial Center (203)821-3700
157 Church Street
New Haven, Connecticut 06510 Fax (203) 773-5376

August 18, 2010

David T. Grudberg, Esq.
William F. Dow III, Esq.
Law Offices of Jacobs, Grudberg, Belt, Dow & Katz, P.C.
350 Orange Street
New Haven, Connecticut 06511-6403

Re: United States v. Douglas Perlitz
Criminal No. 3:09CR 207 (JBA)

Dear Attorneys Grudberg and Dow:

This letter confirms the plea agreement between your client, Douglas Perlitz (the "defendant" or "Perlitz"), and the United States Attorney's Office for the District of Connecticut (the "Government" or "this Office") concerning the above-referenced criminal matter.

THE PLEA AND OFFENSE

Defendant Douglas Perlitz agrees to waive his right to be indicted and to plead guilty to a one-count Information charging him with travel with the intent to engage in illicit sexual conduct, in violation of 18 U.S.C. § 2423(b). He understands that, to be guilty of this offense, the following essential elements of the offense must be satisfied:

1. The defendant is a United States citizen;
2. The defendant traveled in foreign commerce;
3. One of the dominant purposes of the travel was to engage in illicit sexual conduct with another person.

For the purposes of this crime, illicit sexual conduct is defined in 18 U.S.C. § 2423(f).

THE PENALTIES

This offense carries a maximum penalty of 30 years imprisonment and a \$ 250,000 fine. Moreover, any sentence of incarceration under this provision must also include a term of supervised release of at least five years and as much as life. 18 U.S.C. § 3583(k). The defendant understands that, should he violate any condition of the supervised release, he may be required to serve a further term of imprisonment of up to five years with no credit for time already spent on supervised release. However, if the defendant is required to register under the Sex Offender Registration and Notification Act, and violates a condition of supervised release by committing any felony offense in chapters 109A, 110, 117, or sections 1201 or 1591 of Title 18, United States Code, then the defendant shall be required to serve a term of not less than five years of imprisonment. 18 U.S.C. § 3583(k).

The defendant also is subject to the alternative fine provision of 18 U.S.C. § 3571. Under this section, the maximum fine that may be imposed on the defendant is the greatest of the following amounts: (1) twice the gross gain to the defendant resulting from the offense; (2) twice the gross loss resulting from the offense; or (3) \$250,000.

In addition, the defendant is obligated by 18 U.S.C. § 3013 to pay a special assessment of \$100. The defendant agrees to pay the special assessment to the Clerk of the Court on the day of sentencing.

The defendant is also subject to restitution, as discussed below. Unless otherwise ordered, should the Court impose a fine or restitution of more than \$2,500 as part of the sentence, interest will be charged on the unpaid balance of the fine or restitution not paid within 15 days after the judgment date. 18 U.S.C. § 3612(f). Other penalties and fines may be assessed on the unpaid balance of a fine or restitution pursuant to 18 U.S.C. § 3572 (h), (i) and § 3612(g).

Finally, in addition to the standard conditions of any supervised release, the defendant understands that the Government will request and the Court may order certain additional conditions, as set forth in the attached Rider entitled: Additional Conditions of Supervised Release.

Restitution

In addition to the other penalties provided by law, the Court must also order that the defendant make restitution under 18 U.S.C. § 3663A, and the Government reserves its right to seek restitution on behalf of victims consistent with the provisions of § 3663A. The scope and effect of the order of restitution are set forth in the attached Rider Concerning Restitution. Restitution is payable immediately unless otherwise ordered by the Court.

THE SENTENCING GUIDELINES

Applicability

The defendant understands that the Court is required to consider any applicable Sentencing Guidelines as well as other factors enumerated in 18 U.S.C. § 3553(a) to tailor an appropriate sentence in this case and is not bound by any of the terms set forth in this plea agreement. The defendant agrees that the Sentencing Guideline determinations will be made by the Court, by a preponderance of the evidence, based upon input from the defendant, the Government, and the United States Probation Office. The defendant further understands that he has no right to withdraw his guilty plea if his sentence or the Guideline application is other than he anticipated, including if the sentence is outside any of the ranges set forth in this agreement.

Acceptance of Responsibility

If the defendant accepts the terms of this plea and enters his plea of guilty to the Information on or before August 19, 2010, in accord with this agreement, the Government agrees to recommend that the Court reduce by two levels the defendant's adjusted offense level under § 3E1.1(a) of the Sentencing Guidelines, based on the defendant's prompt recognition and affirmative acceptance of personal responsibility for the offense. Moreover, if the defendant enters his plea of guilty on or before August 19, 2010, the Government intends to file a motion with the Court pursuant to § 3E1.1(b) recommending that the Court reduce defendant's adjusted offense level by one additional level based on the defendant's prompt notification of his intention to enter a plea of guilty.

The above-listed recommendations are conditioned upon the defendant's full, complete, and truthful disclosure to the Probation Office of information requested, of the circumstances surrounding his commission of the offense, of his criminal history, and of his financial condition through the submission of a complete and truthful financial statement. In addition, the recommendations are conditioned upon the defendant timely providing complete information to the Government concerning his involvement in the offense to which he is pleading guilty. The Government agrees that defendant's admissions in the attached Stipulation of Offense conduct are sufficient to satisfy this condition subject to the following paragraph. The Government reserves its right to raise facts regarding other victims for the purposes of sentencing. The defendant understands that the Court is not obligated to accept the Government's recommendations on the reductions.

The Government will not make the recommendations if the defendant engages in any acts after pleading guilty which, in the Government's view, (1) indicate that the defendant has not terminated or withdrawn from criminal conduct or associations (Sentencing Guideline § 3E1.1); (2) could provide a basis for an adjustment for obstructing or impeding the administration of justice (Sentencing Guideline § 3C1.1); or (3) constitute a violation of any condition of release.

Moreover, the Government will not make the recommendations if the defendant seeks to withdraw his plea of guilty or takes a position at sentencing, or otherwise, which, in the Government's assessment, is inconsistent with affirmative acceptance of personal responsibility. The defendant understands that he may not withdraw his plea of guilty if, for the reasons explained above, the Government does not make one or both of the recommendations.

Stipulation

Pursuant to § 6B1.4 of the Sentencing Guidelines, the defendant and the Government have entered into a Stipulation of Offense Conduct, which is attached to and made a part of this plea agreement. The defendant understands that this stipulation does not set forth all of the relevant conduct and characteristics that may be considered by the Court for purposes of sentencing. The defendant reserves his right to contest any alleged conduct and characteristics to which he has not stipulated. In turn, the Government reserves its right to present additional information to the Court and to raise facts regarding additional victims for the purposes of sentencing. The defendant understands that this stipulation is not binding on the Court. The defendant also understands that the Government and the United States Probation Office are obligated to advise the Court of any additional relevant facts that subsequently come to their attention.

Guideline Stipulations and Calculations

The parties agree as follows:

The Guidelines Manual in effect on the date of sentencing is used to determine the applicable Guidelines range. The parties also agree that the following base level offense and enhancements apply in this case.

U.S.S.G. § 2G1.3 - base level offense	24
U.S.S.G. §2G1.3(b)(1) - minors were in the custody, care, or supervisory control of the defendant.	+2
U.S.S.G. §2G1.3(b)(4) - commission of sex act, sexual conduct or commercial act.	+2
U.S.S.G. §3D1.4 - grouping more than five victims	+5

The parties disagree about the following three enhancements and reserve their right to address the court regarding these enhancements. The Government believes that all three apply. The defendant does not believe that any of the following three enhancements apply.

U.S.S.G. §3A1.1(b)(1) - vulnerable victim	+2
U.S.S.G. §2G1.3(b)(3)(B) - use of a computer to entice, encourage, offer or solicit a person to engage in prohibit sexual conduct .	+2

U.S.S.G. §3C1.1 - obstruction. +2

Based on an initial assessment, the parties agree that the defendant falls within Criminal History Category I.

Defendant's Calculation

Assuming a three (3) point reduction for acceptance of responsibility from an adjusted offense level of 33, the defendant's Guideline calculation is as follows: A total offense level 30 and a Criminal History Category I, would result in a range of 97 to 121 months of imprisonment (sentencing table) and a fine range of \$ 15,000 to \$ 150,000, U.S.S.G. § 5E1.2(c)(3). The defendant is also subject to a supervised release term of a mandatory minimum of five years and a maximum of up to life. U.S.S.G. § 5D1.2.

Government's Calculation

Assuming a three (3) point reduction for acceptance of responsibility from an adjusted offense level of 39, the Government's Guidelines calculation is as follows: A total offense level 36 and a Criminal History Category I, would result in a range of 188 to 235 months of imprisonment (sentencing table) and a fine range of \$ 20,000 to \$ 200,000, U.S.S.G. § 5E1.2(c)(3). The defendant is also subject to a supervised release term of a mandatory minimum of 5 years and a maximum of up to life. U.S.S.G. § 5D1.2.

Parties' Agreement as to Sentencing Recommendations

The defendant expressly understands that the Court will determine the sentence in this case and is in no way bound by terms of this agreement or the Guideline ranges specified herein. The parties agree that they will not seek a sentence outside the range of 97 to 235 months of incarceration. In other words, no matter what the Court determines the Guidelines range to be, the defendant will not seek a downward departure or request a non-Guideline sentence of less than 97 months. In turn, no matter what the Court determines the Guidelines range to be, the Government will not seek an upward departure or a non-Guideline sentence above 235 months of incarceration. Both parties reserve their rights to seek departures or request non-Guideline sentences within the 97 to 235 month range. Neither party will suggest that the Probation Department consider a departure or adjustment outside the 97 to 235 months range or suggest that the Court *sua sponte* consider a departure or adjustment outside the 97 to 235 month range.

The defendant further understands that he will not be permitted to withdraw the plea of guilty if the Court imposes a sentence outside any of the ranges set forth in this agreement or outside any of the recommendations to be made by any of the parties regarding the length of defendant's sentence.

In the event the Probation Office or the Court contemplates any sentencing calculations different from those stipulated by the parties, the parties reserve the right to respond to any inquiries and make appropriate legal arguments regarding the proposed alternate calculations. Moreover, the Government expressly reserves the right to defend any sentencing determination, even if it differs from that stipulated by the parties, in any post-sentencing proceeding.

Appeal Rights Regarding Sentencing

The parties reserve their respective rights to appeal and to oppose each other's appeal of the sentence imposed as permitted by 18 U.S.C. § 3742.

Information to the Court

The Government reserves its right to address the Court with respect to an appropriate sentence to be imposed in this case. Moreover, the Government will discuss the facts of this case, including information regarding the defendant's background and character, 18 U.S.C. § 3661, with the United States Probation Office and will provide the Probation Officer with access to material in its file, with the exception of grand jury material.

WAIVER OF RIGHTS

Waiver of Right to Indictment

The defendant understands that he has the right to have the facts of this case presented to a federal grand jury, consisting of between sixteen and twenty-three citizens, twelve of whom would have to find probable cause to believe that he committed the offense set forth in the information before an indictment could be returned. The defendant acknowledges that he is knowingly and intelligently waiving his right to be indicted.

Waiver of Trial Rights and Consequences of Guilty Plea

The defendant understands that he has the right to be represented by an attorney at every stage of the proceeding and, if necessary, one will be appointed to represent him.

The defendant understands that he has the right to plead not guilty or to persist in that plea if it has already been made, the right to a public trial, the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against him, the right not to be compelled to incriminate himself, and the right to compulsory process for the attendance of witnesses to testify in his defense. The defendant understands that by pleading guilty he waives and gives up those rights and that, if the plea of guilty is accepted by the Court, there will not be a further trial of any kind.

The defendant understands that, if he pleads guilty, the Court may ask him questions about each offense to which he pleads guilty, and if he answers those questions falsely under oath, on the record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or making false statements.

Waiver of Venue and other Constitutional Challenges to the Statute

In light of this Court's ruling that venue for the Second Superseding Indictment is not proper in the District of Connecticut, the defendant understands that by entering a plea to this Information, the defendant is knowingly, intelligently and voluntarily waiving his Constitutional right to a trial by an impartial jury in a particular place or "venue" – namely, in a state and district where the crime was committed. The defendant understands that the Government must prosecute an offense in a district where the offense was committed and that this Court has already determined that the essential conduct elements of the crimes charged did not occur in Connecticut. By entering into this plea agreement, the defendant expressly acknowledges that he is knowingly, intelligently and voluntarily waiving his Constitutional right to be tried in a district or districts where venue is proper; he is knowingly, intelligently and voluntarily waiving his right to be prosecuted and tried in such districts; and he knowingly, intelligently and voluntarily consents to the disposition of this case in the District of Connecticut. Such a waiver of right to be tried in the state and district where a crime was committed is constitutionally permissible. See Singer v. United States, 380 U.S. 24, 35 (1965). Moreover, the defendant had raised other constitutional challenges to 18 U.S.C. § 2423(b), the statute charged in this Information. Defendant understands that by entering into this plea agreement, he is also knowingly, intelligently and voluntarily waiving his right to challenge the constitutionality of that statute.

Waiver of Statute of Limitations

The defendant agrees that, should the conviction following defendant's plea of guilty pursuant to this plea agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this plea agreement (including any indictment or counts the Government has agreed to dismiss at sentencing pursuant to this plea agreement) may be commenced or reinstated against defendant, notwithstanding the expiration of the statute of limitations between the signing of this plea agreement and the commencement or reinstatement of such prosecution. The defendant agrees to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date the plea agreement is signed.

Waiver of Right To Post-Conviction DNA Testing of Physical Evidence

The defendant understands that the Government has various items of physical evidence in its possession in connection with this case that could be subjected to DNA testing. The

defendant further understands that, following conviction in this case, he could file a motion with the Court to require DNA testing of physical evidence pursuant to 18 U.S.C. § 3600 and § 3600A in an attempt to prove his innocence. The defendant understands his right to have all the physical evidence in this case tested for DNA, has discussed this right with his counsel, and knowingly and voluntarily waives his right to have such DNA testing performed on the physical evidence in this case. Defendant understands that, because he is waiving this right, the physical evidence in this case will likely be destroyed or will otherwise be unavailable for DNA testing in the future.

ACKNOWLEDGMENT OF GUILT AND VOLUNTARINESS OF PLEA

The defendant acknowledges that he is entering into this agreement and is pleading guilty freely and voluntarily because he is guilty. The defendant further acknowledges that he is entering into this agreement without reliance upon any discussions between the Government and him (other than those described in the plea agreement letter), without promise of benefit of any kind (other than the concessions contained in the plea agreement letter), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges his understanding of the nature of the offense to which he is pleading guilty, including the penalties provided by law. The defendant also acknowledges his complete satisfaction with the representation and advice received from his undersigned attorney. The defendant and his undersigned counsel are unaware of any conflict of interest concerning counsel's representation of the defendant in the case.

PREVAILING PARTY

The defendant acknowledges that he is not a "prevailing party" within the meaning of Public Law 105-119, section 617 ("the Hyde Amendment") with respect to the count of conviction or any other count or charge that may be dismissed pursuant to this agreement. The defendant voluntarily, knowingly, and intelligently waives any rights he may have to seek attorney's fees and other litigation expenses under the Hyde Amendment.

SCOPE OF THE AGREEMENT

The defendant acknowledges that this agreement is limited to the United States Attorney's Office for the District of Connecticut, the Eastern District of New York, the District of Colorado, the Southern District of Florida, the Northern District of California and the Eastern District of Michigan, and cannot bind any other federal authority, or any state or local authority. The defendant acknowledges that no representations have been made to him with respect to any civil or administrative consequences that may result from this plea of guilty because such matters are solely within the province and discretion of the specific administrative or governmental entity involved.

COLLATERAL CONSEQUENCES

The defendant further understands that he will be adjudicated guilty to the offense to which he has pleaded guilty and will be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, and to possess firearms. The defendant understands that pursuant to section 203(b) of the Justice For All Act, the Bureau of Prisons or the Probation Office will collect a DNA sample from the defendant for analysis and indexing. Finally, the defendant understands that the Government reserves the right to notify any state or federal agency by which he is licensed, or with which he does business, as well as any current or future employer of the fact of his conviction.

SEX OFFENDER REGISTRATION

The defendant acknowledges that he has been advised and understands that, under the federal Sex Offender Registration and Notification Act, he must register and keep the registration current in each of the following jurisdictions: where he resides; where he is an employee; and where he is a student. He understands that the requirements for registration include providing his name, his residence address, and the names and addresses of any places where he is or will be an employee or a student, among other information. He further understands that the requirement to keep the registration current includes informing at least one jurisdiction in which he resides, is an employee, or is a student not later than three business days after any change of his name, residence, employment, or student status. The defendant has been advised, and understands, that failure to comply with these obligations subjects him to prosecution for failure to register under federal law, 18 U.S.C. § 2250, which is punishable by a fine or imprisonment, or both.

SATISFACTION OF FEDERAL CRIMINAL LIABILITY

The defendant's guilty plea, if accepted by the Court, will satisfy the federal criminal liability of the defendant in the District of Connecticut, Eastern District of New York, District of Colorado, Southern District of Florida, Northern District of California, and the Eastern District of Michigan, as a result of his participation in traveling to Haiti for the purpose of engaging in illicit sexual conduct with minors in Haiti, and any subsequent illicit sexual conduct after such travel, from 2001 through and including 2008, which formed the basis of the Second Superseding Indictment and forms the basis of the Information now filed in this case. He expressly understands and agrees that this agreement does not address any other federal criminal liability he may have in Connecticut or elsewhere. Moreover, the Government will dismiss the charges against the defendant that are currently pending in the Eastern District of New York after the defendant is sentenced in Connecticut.

The defendant understands that if, before sentencing, he violates any term or condition of this agreement, engages in any criminal activity, or fails to appear for sentencing, the Government may void all or part of this agreement. If the agreement is voided in whole or in part, defendant will not be permitted to withdraw his plea of guilty.

Defendant further understands and agrees that his admissions in the Stipulation of Offense Conduct section are material conditions of this plea agreement. If the defendant seeks to withdraw from any of the admissions set forth in the Stipulation of Offense Conduct, the Government will deem defendant's effort to withdraw from the admissions as a material breach of this plea agreement and the Government may void all or part of this agreement, including, but not limited to, the non-prosecution provisions of this agreement.

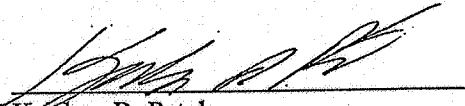
NO OTHER PROMISES

The defendant acknowledges that no other promises, agreements, or conditions have been entered into other than those set forth in this plea agreement, and none will be entered into unless set forth in writing, signed by all the parties.

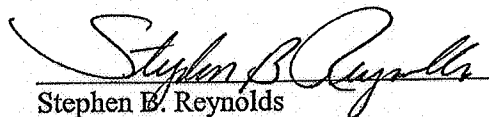
This letter shall be presented to the Court, in open court, and filed in this case.

Very truly yours,

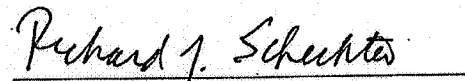
DAVID B. FEIN
UNITED STATES ATTORNEY



Krishna R. Patel
Assistant United States Attorney

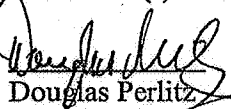


Stephen E. Reynolds
Assistant United States Attorney



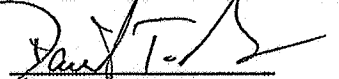
Richard J. Schechter
Senior Litigation Counsel

The defendant certifies that he has read this plea agreement letter and its attachments or has had it read or translated to him, that he has had ample time to discuss this agreement and its attachment(s) with counsel and that he fully understands and accepts its terms.

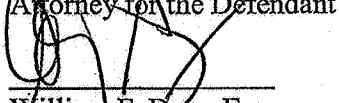

Douglas Perlitz
The Defendant

8/18/10
Date

We have thoroughly read, reviewed and explained this plea agreement and its attachments to our client who advises me that he understands and accepts its terms.


David T. Grudberg, Esq.
Attorney for the Defendant

8/18/10
Date


William F. Dow, Esq.
Attorney for the Defendant

8/18/10
Date

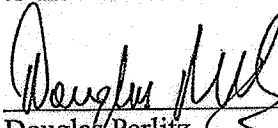
STIPULATION OF OFFENSE CONDUCT

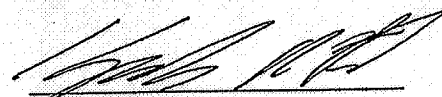
The defendant Douglas Perlitz and the Government stipulate to the following offense conduct that gives rise to the defendant's agreement to plead guilty to the Information.

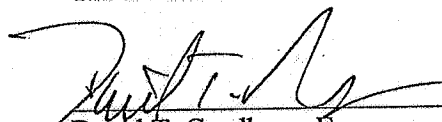
I am a United States citizen and have been since birth. On or about June 6, 2005, I traveled from Queens, New York to Haiti for the purpose of engaging in illicit sexual conduct, and did engage in illicit sexual conduct with P.G., as that term is defined in 18 U.S.C. § 2423(f).


I have reviewed the definition of illicit sexual conduct contained in 18 U.S.C. § 2423(f) and its cross-reference, 18 U.S.C. § 2246, with my attorneys and I acknowledge that from 2001 until 2008, I traveled from the United States to Haiti on various occasions with the purpose of engaging in illicit sexual conduct and did engage in illicit sexual conduct as set forth in the statute and its cross-reference, 18 U.S.C. § 2246, with the following additional minor victims: D.M., D.C., F.J.C., R.P., N.S., M.M., and H.D. I have reviewed the list of the minor victims' full names that is to be submitted to the Court to be filed under seal and that list corresponds to the initials set forth above.

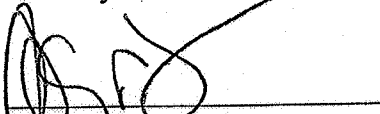
The written stipulation above is incorporated into the preceding plea agreement. The defendant and the Government reserve their right to present additional relevant offense conduct to the attention of the Court in connection with sentencing.

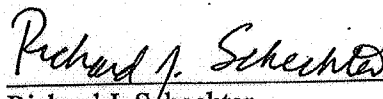

Douglas Perlitz
The Defendant


Krishna R. Patel
Assistant United States Attorney


David T. Grudberg, Esq.
Attorney for the Defendant


Stephen B. Reynolds
Assistant United States Attorney


William F. Dow, Esq.
Attorney for the Defendant


Richard J. Schechter
Senior Litigation Counsel

RIDER CONCERNING RESTITUTION

The Court shall order that the defendant make restitution under 18 U.S.C. § 3663A. The order of restitution may include:

1. If the offense resulted in damage to or loss or destruction of property of a victim of the offense, the order of restitution shall require the defendant to:

A. Return the property to the owner of the property or someone designated by the owner; or

B. If return of the property is impossible, impracticable, or inadequate, pay an amount equal to:

The greater of -

(I) the value of the property on the date of the damage, loss, or destruction; or

(II) the value of the property on the date of sentencing, less the value as of the date the property is returned.

2. In the case of an offense resulting in bodily injury to a victim -

A. pay an amount equal to the costs of necessary medical and related professional services and devices related to physical, psychiatric, and psychological care; including non-medical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

B. pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

C. reimburse the victim for income lost by such victim as a result of such offense;

3. In the case of an offense resulting in bodily injury that results in the death of the victim, pay an amount equal to the cost of necessary funeral and related services; and

4. In any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense.

The order of restitution has the effect of a civil judgment against the defendant. In addition to the court-ordered restitution, the court may order that the conditions of its order of restitution be made a condition of probation or supervised release. Failure to make restitution as ordered may result in a revocation of probation, or a modification of the conditions of supervised release, or in the defendant being held in contempt under 18 U.S.C. § 3583(e). Failure to pay restitution may also result in the defendant's re-sentencing to any sentence which might originally have been imposed by the Court. See 18 U.S.C. §§ 3614; 3613A. The Court may also order that the defendant give notice to any victim(s) of his offense under 18 U.S.C. § 3555.

RIDER: ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

1. The defendant shall participate in mental health treatment, with an emphasis on sexual offender treatment, either inpatient or out-patient, to include participation with polygraph administration, as directed by the United States Probation Office. The defendant shall pay all, or a portion of, the costs associated with mental health treatment based on his ability to pay, in an amount to be determined by the United States Probation Office;
2. The defendant shall agree that any device that he uses with Internet access, including a computer, will be equipped with monitoring software that will permit the United States Probation Office to determine whether he has been in contact with minors, either through email, chat rooms, instant messaging, or any other electronic means.¹ The defendant shall pay all, or a portion of, the costs associated with computer monitoring based on his ability to pay, in an amount to be determined by the United States Probation Office;
3. The defendant shall consent to third-party disclosure to any employer, potential employer, community service site, or other interested party, as determined by the United States Probation Office, of any computer-related restrictions that are imposed;
4. The defendant shall have no unsupervised contact with any child under 18 years of age without the express permission of the United States Probation Office and treatment provider. On release, the United States Probation Office will determine whether the defendant may have unsupervised contact with his own children;
5. The defendant shall permit the United States Probation Office, accompanied with either local, state, or Federal law enforcement authorities, upon reasonable suspicion,² to conduct a search of the defendant's residence, automobile, and workplace for the presence of sexually explicit materials involving minors;
6. The defendant shall comply with any applicable federal, state and local sex offender registry laws and requirements;
7. The defendant shall provide the United States Probation Office with access to any requested financial records, including but not limited to, telephone bills and credit card statements;

¹ Narrowly tailored to conform to United States v. Lifshitz, 369 F.3d 173 (2d Cir. 2004).

² Id.

8. The defendant shall not loiter around playgrounds, schools, arcades or any other places where children under the age of 18 congregate. The defendant shall not associate with or have contact with convicted sex offenders or those considered inappropriate by the United States Probation Office because of a connection to sexual abuse of minors or sexually explicit materials involving minors, unless as part of an approved counseling group;

9. The defendant is prohibited from holding any position of authority or guidance over children or youth groups involving individuals under the age of 18; and

10. The defendant is prohibited from accessing or possessing sexually explicit materials involving minors.

EXHIBIT 6

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

* * * * *

UNITED STATES OF AMERICA,

Government,

vs.

DOUGLAS PERLITZ,

Defendant.

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* Case No 9CR207(JBA)

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* March 7, 2011

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TRANSCRIPT OF HEARING ON RESTITUTION ORDER

BEFORE: THE HONORABLE JANET BOND ARTERTON, U.S.D.J.

Appearances:

FOR THE GOVERNMENT:

KRISHNA PATEL, ESQ.
STEPHEN REYNOLDS, ESQ.
RICHARD SCHECHTER, ESQ.
United States Attorney's
Office
915 Lafayette Blvd
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FOR THE DEFENDANT:

WILLIAM DOW, ESQ
DAVID GRUDBERG, ESQ.
Jacobs, Grudberg, Belt, Dow
& Katz
350 Orange Street
New Haven, CT 06510

Court Reporter:

Sharon Montini, RMR
141 Church Street
New Haven, CT 06510

Proceedings recorded by mechanical stenography,
transcript produced by computer.

1 THE COURT: Good morning, counsel.
2 Please be seated. We're here this morning in United
3 States v. Douglas Perlitz, 9cr207.

4 May I have appearances? For the
5 government?

6 MS. PATEL: Krishna Patel and Steve
7 Reynolds for the United States. And also present in
8 the courtroom is Rod Khattabi from ICE and Michael
9 McCooey from the Haiti Fund.

10 THE COURT: Good morning. And for the
11 defendant?

12 MR. DOW: Good morning, your Honor.
13 William Dow for Mr. Perlitz, together with Mr.
14 Grudberg.

15 THE COURT: All right, and Mr. Bouffard
16 is here as well. Good morning.

17 PROBATION OFFICER BOUFFARD: Good
18 morning, your Honor.

19 THE COURT: Our purpose today is to set
20 a restitution order left open at the time of the
21 December 21st sentencing by agreement.

22 Mr. Dow, the discussion of whether Mr.
23 Perlitz would be present here has been ongoing prior
24 to this, and I understand that Mr. Perlitz wishes to
25 waive his right to be personally present here.

1 Mr. Grudberg.

2 MR. GRUDBERG: Yes, your Honor. As I
3 had indicated to chambers, Mr. Perlitz did not wish
4 to be present, expressed a clear preference not to
5 be present. I was asked to try to get a signed
6 waiver from him, and I forwarded a waiver as soon as
7 I got that request to him. I believe he's still in
8 custody at MDC Brooklyn. I have not received the
9 signed waiver back yet, but I expect I will have it,
10 and will file it with the court upon receipt.

11 THE COURT: All right, fine. Thank you
12 very much.

13 Our purpose here is to set a restitution
14 order under the Mandatory Victims Restoration Act,
15 18, United States Code, 3663(a) and 3664. The act
16 requires that restitution be imposed in favor of
17 victims for the amount of their losses without
18 consideration of the defendant's ability to pay,
19 with the exception that if the issue of determining
20 the individual losses of victims is so complex that
21 it would -- that that complexity would unduly burden
22 the sentencing process versus the need to provide
23 restitution to the victims.

24 There is no question the victims are
25 needy, but there is also no question that there are

1 many, and so I have the government's proposal that a
2 restitution fund in the amount of \$42,758, plus cars
3 in Haiti, be the amount ordered, that being the
4 totality of Mr. Perlitz's known assets.

5 I have a letter, which I think all
6 counsel have received -- well, I don't know, did
7 you, from Attorney Ezili Danto, who is the president
8 of the Haitian Lawyers Leadership Network, and who
9 sets out a proposal that I would like your input on.
10 And I understand, as well, that we will hear from
11 others with respect to how this should be set up.

12 So, why don't I ask Ms. Patel to bring
13 me up-to-date on how the issue of restitution should
14 be handled in the government's view.

15 MS. PATEL: Your Honor, there are two
16 things, two separate issues that I would like to
17 speak to. One is for today's purposes the amount of
18 the restitution. Your Honor is correct, we have
19 attempted various ways of attempting to calculate
20 victim losses in this case, and just given the
21 conditions on the ground in Haiti at present, it is
22 really, really difficult to do that. So, we've made
23 a decision, and I think it is a wise decision
24 because there will be no objection from the defense,
25 and this way the issue will come to a rest, and that

1 is that the amount that is set forth in the short
2 form statement of Mr. Perlitz's net worth be the
3 amount that the Court order in terms of the monetary
4 amount into a fund.

5 We do recognize, because it's IRA
6 money, that there are possible tax penalties. I'm
7 not certain as to how that works. I know our office
8 handles restitution, and if the Court orders it
9 today, I will inform Chris Sciarrino and we can go
10 from there. But if we get a money order in the
11 total amount of -- and perhaps the order should read
12 the amounts included in these three bank accounts,
13 because I know that this short form statement was
14 done on November 11, 2010, I don't know if they've
15 increased in value, decreased in value, so in terms
16 of the amount from Mr. Perlitz, that is what we're
17 requesting go into the clerk of the court.

18 Separately, an issue that has
19 consistently come up is the fact that several
20 vehicles, while Mr. Perlitz was the director the
21 Haiti Fund, were placed in his name. These
22 vehicles, the money for these vehicles were provided
23 by the Haiti Fund, and there are two remaining
24 vehicles, and we'd ask for a separate court order.
25 Again, we understand there is no objection that

1 these vehicles revert back to the Haiti Fund's
2 authority. Mr. McCooey is here. My understanding
3 is he's looking for ways to ensure that these
4 vehicles are used to benefit either the staff
5 members who are continuing to work with the children
6 or the children themselves in some manner.

7 Since the sentencing in this case, your
8 Honor may not have known, but the head of an
9 organization called Kids Alive was actually present
10 at the sentencing, and separate and apart from this
11 case, both the -- two separate organizations, the
12 Order of Malta and Fairfield University, have been
13 looking for ways to deal with the difficult
14 situation of these children, having lost everything
15 through PPT closing down. Both Fairfield University
16 and Order of Malta were significant donors to the
17 Haiti Fund and to PPT.

18 My understanding is that they have been
19 in conversation with Kids Alive, who is on the
20 ground in Cap-Haitien, and there has been
21 conversation about having Robinson come and work
22 with Kids Alive, and I understand that he actually
23 may be working with Kids Alive right now, to set up
24 some kind of fund so that all of the children at PPT
25 could get access to certain things, whether it be

1 vocational training, assistance with housing, that
2 sort of thing, but to kind of talk about what can be
3 done.

4 And that's been a bit of some
5 difficulty. What has happened, in honesty,
6 unfortunately and sadly, the children -- the
7 victims, who are no longer children, but the
8 students, have now been fed some information that
9 there was a lot of money that was going to be coming
10 to them because they were victims in this case, and
11 it's caused an enormous amount of difficulty in
12 Cap-Haitien. Some of the students are demanding to
13 know -- or victims, are demanding to know where the
14 money is. There is a lot of -- just a lot of issues
15 that are going on and a lot of people who are
16 getting involved, and my concern at this point, I
17 think it's a concern shared by Mr. McCooey, is Kids
18 Alive may be a little bit more resistant to going in
19 because of the concern that -- the feeling down
20 there is Kids Alive has been given all of this
21 money, either from the court, from the Order of
22 Malta or from Fairfield University, and there has
23 even been issues of possible threats and things
24 along those lines.

25 So, for today's purposes, you know, I

1 think that moving Mr. Perlitz's money and dealing
2 with the cars we can handle. What I am offering to
3 the Court are three possible options to consider in
4 the next few weeks, if your Honor is amenable to any
5 of them. The first and the easiest option is that
6 we can take whatever money we are able to seize from
7 the accounts, we can send Agent Khattabi down to
8 Cap-Haitien, and I would ask that he meet all of the
9 children in a bank and literally disseminate the
10 money. We have to determine who would be victims if
11 that were the case. That would be perhaps the
12 easiest and the quickest way of handling it. And
13 for our purposes, then Mr. Perlitz's money could go
14 directly to the victims, and we can decide whether
15 it's the eight victims he talked about in the plea
16 agreement, the 16 that your Honor made the
17 sentencing findings on, or a larger number that we
18 believe were victimized.

19 The second option is for your Honor to
20 take the money with the clerk of the court to set up
21 a restitution fund of sorts. And Mr. McCooey is
22 willing to work with us to determine if Kids Alive
23 is willing to act as sort of a court monitor for
24 that \$40,000 to ensure it goes for some type of
25 training, some type of assistance.

1 The third option, and it's an
2 interesting option, this doesn't include also Ms.
3 Danto, these are the three options the government
4 would like to add to the table, that is the
5 possibility, and I haven't been able to determine
6 whether we can legally do it, I don't think there is
7 anything precluding us from doing it, is the
8 possibility that the Order of Malta and Fairfield
9 University might be interested in putting a pool of
10 money together with the restitution fund with the
11 clerk of the court and having your Honor set up a
12 court monitor to have this money then disseminated.
13 Kids Alive would be a good mediator, intermediary,
14 to get a lot of this done. If we were able to do
15 that option, and if Order of Malta and Fairfield
16 University were amenable, we're talking about a much
17 greater sum of money. My understanding is it could
18 be as high as a quarter of a million dollars,
19 \$250,000, to add to the restitution fund.

20 I think if we go down that road, one,
21 certainly we'd need to ensure that these children
22 are given -- or the victims are given access to the
23 money in a meaningful way so that it's used in a
24 meaningful way, and two, I think it might alleviate
25 some of the concerns down in Haiti for any

1 organization to say the money is not with an
2 organization down there, that the United States
3 government, the court in fact, is controlling the
4 money, is ensuring the money -- is overseeing the
5 money.

6 In a very separate case in a different
7 set of circumstances we did create somewhat of a
8 novel fund in a sex trafficking case I did before
9 Judge Hall, and in that case I asked Judge Hall if
10 she would be willing to appoint a magistrate judge,
11 and Judge Fitzsimmons is actually running that
12 victim fund, and, you know, I think it's worked out
13 well. You know, certainly the kids go through
14 difficulty here and there, but she is able to meet
15 with people as need be, talk to people as need be,
16 and what she's able to do is make sure that the
17 money from the clerk's office goes directly to
18 whoever is providing the benefit, so it's directly
19 going to a landlord, it's directly going to a
20 school, as much as that is possible. And the only
21 reason I would ask the Court to consider a
22 magistrate is because I think -- the government's
23 view, we certainly appreciate Ms. Danto stepping up
24 to the plate, but we would like 100 cents of every
25 dollar to be able to get to the victims, and this

1 would avoid any kind of separate fees going out.

2 So, there is three other options in
3 addition to Ms. Danto's option in terms of, you
4 know, kind of giving your Honor some thoughts about
5 how to proceed.

6 THE COURT: All right, thank you.

7 Mr. Grudberg or Mr. Dow?

8 MR. GRUDBERG: Yes, your Honor, thank
9 you. We largely defer to the Court's discretion in
10 terms of what the Court determines is best here.
11 There are a few points that we do have some strong
12 feelings about.

13 Number one, I agree with the government
14 that, if at all possible, 100 percent of every
15 restitution dollar should go to benefit victims in
16 this case. While I appreciate Ms. Danto's proposal
17 and offer, she was, as I understood her letter,
18 requesting some stipend to be paid out of the fund
19 for providing the service that she was offering to
20 do. It seems to me, if at all possible, if there is
21 either an organization already on the ground in
22 Cap-Haitien or, you know, Haiti is still with an
23 NGO, if there is an existing structure that can help
24 disseminate any restitution funds to victims without
25 taking a cut off the top, that would be preferable.

1 Number two, it's our feeling that
2 whatever determination the Court makes with respect
3 to victims, it is the defendant's strong preference
4 that any restitution monies go to benefit as many of
5 the former PPT members as possible. Clearly people
6 who have been victims of sexual misconduct, whatever
7 number the Court determines it to be, are the most
8 immediate victims, but everyone in that project has
9 suffered as a result, and it is our request that if
10 at all possible restitution monies also benefit not
11 just victims of sexual misconduct, but people who
12 previously benefited from the work of PPT who no
13 longer receive that assistance and support because
14 of Mr. Perlitz's misconduct.

15 The only other observation I would have
16 in terms of -- it's really a mechanical one with
17 respect to the dollars, and it's one I've not,
18 frankly, encountered before. As Ms. Patel noted,
19 the vast majority of the funds that are listed, and
20 obviously I don't know what the balances are, I
21 expect they're in the ballpark of what was listed on
22 the financial statement, but the vast majority of
23 those funds are in an IRA, or IRAs, I believe
24 they're Roth IRAs. From the limited research I've
25 tried to do, I think there is a 10% penalty that the

1 IRS would typically levy on an early withdrawal from
2 an IRA.

3 Now, I don't know if the government is
4 somehow able to execute on those accounts, whether
5 that would trump any IRS penalty. I don't know
6 whether, if say Mr. Perlitz were to execute the
7 necessary paperwork to get the money out, that 10%
8 is automatically withheld. My suspicion is that it
9 would be. But, clearly, if there is any way to get
10 as much of that money as possible without incurring
11 the penalties, that would be our preference as well.
12 And it's my understanding there are certain
13 exceptions to the 10% penalty. I don't know whether
14 court restitution is one of them, but the more the
15 Court could order, the greater chance we'd have, I
16 think perhaps with Ms. Sciarrino's help on the
17 financial side, that would try to increase the
18 likelihood that as much of the money that's there
19 gets to the victims in Haiti. So, those are our own
20 thoughts on the matter.

21 THE COURT: All right, thank you.

22 Now, Ms. Patel, you indicated that Mr.
23 McCooey was here and someone from Kids Alive.
24 Should I be hearing from them as to what they would
25 be proposing, or how would you like to proceed?

1 MS. PATEL: Mr. McCooey is here. He is
2 here for two purposes. One, to the extent the Court
3 had any questions about the two vehicles, he's
4 certainly here to either proffer, if necessary to
5 testify, that these were both vehicles bought by
6 Haiti Fund's monies, and, therefore, should probably
7 go back to the Haiti Fund, and it is certainly his
8 intention to use these vehicles to benefit the kids.
9 We were unable to have Mr. Lackey call in today,
10 he's in Indiana, and Mr. McCooey can certainly
11 speak, to the extent your Honor has any questions,
12 about what's going on on the ground down there. You
13 know, we've had Agent Khattabi check in, separately
14 we've been in touch with Mr. McCooey. Or if you
15 have any questions about what is happening outside
16 this courtroom with other organizations trying to
17 get relief to the kids and of the difficulty they're
18 having, he's certainly here to answer those
19 questions. But in terms of the proposals that we
20 have offered today, they're all proposals I have
21 discussed with Mr. McCooey.

22 THE COURT: All right, now obviously the
23 proposal that may end out providing the most money
24 for the most victims, and even defining "victim" as
25 broadly as Mr. Grudberg, does have attractiveness.

1 The other thing that has attractiveness, however, is
2 speed. Ms. Danto reflects in her letter, and you
3 have reflected, some concern on the part of the
4 former PPT students as to when will what be
5 forthcoming, and as well the need to protect those
6 students and organizations from those who would
7 attempt to take advantage of this money.

8 So, I would be happy to hear from Mr.
9 McCooey on some concrete ideas that will reflect
10 these concerns that may be contradictory. I don't
11 know whether speed and maximizing available funds
12 are two contradictory directions.

13 MS. PATEL: Your Honor, my only thought
14 about that is depending on how your Honor proceeds,
15 clearly sending Agent Khattabi down there is the
16 easiest and quickest way to get this done and could
17 certainly put some money in the hands of some
18 victims.

19 In terms of if we go down what seems to
20 be a longer road, but perhaps a more beneficial
21 road, I don't know, in the end your Honor may be
22 able to initially determine that a certain amount of
23 money can go out to the children immediately -- or
24 to the victims immediately, you know, for immediate
25 types of housing or food kind of issues. And what I

EXHIBIT 7

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

* * * * *

UNITED STATES OF AMERICA,
Government,
vs.
DOUGLAS PERLITZ,
Defendant.

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* Case No 9CR207(JBA)
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* July 7, 2011
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TRANSCRIPT OF TELEPHONE CONFERENCE

BEFORE: THE HONORABLE JANET BOND ARTERTON, U.S.D.J.

Appearances:
FOR THE GOVERNMENT:

KRISHNA PATEL, ESQ.
STEPHEN REYNOLDS, ESQ.
RICHARD SCHECHTER, ESQ.
United States Attorney's
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915 Lafayette Blvd
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FOR THE DEFENDANT:

WILLIAM DOW, ESQ
DAVID GRUDBERG, ESQ.
Jacobs, Grudberg, Belt, Dow
& Katz
350 Orange Street
New Haven, CT 06510

Court Reporter:

Sharon Montini, RMR
141 Church Street
New Haven, CT 06510

Proceedings recorded by mechanical stenography,
transcript produced by computer.

1 THE COURT: Good afternoon, counsel.
2 I'm sorry to keep you waiting. This is United
3 States v. Perlitz, 9cr207, and this is our further
4 discussion of the restitution distribution.

5 May I have appearances, starting with
6 the government, please.

7 MS. PATEL: Krishna Patel, Rick
8 Schechter and Special Agent Rod Khattabi.

9 THE COURT: Thank you.

10 MR. DOW: David Grudberg for Mr.
11 Perlitz, your Honor.

12 THE COURT: Thank you. So, Agent
13 Khattabi, what's your progress here?

14 MR. KHATTABI: Your Honor, I reached out
15 to Chase, and I met with the assistant branch
16 manager. She -- basically what Chase can do for us,
17 in the sense that we have to -- this is the scenario
18 that Chase offers. They say they -- well, we need
19 to open an account. We have to have an account at
20 Chase, and they will have no problem wiring the
21 money to Sogebank once we open those accounts. They
22 would not be able to waive the fees, which is \$45
23 per fee -- transfer.

24 I spoke to Sogebank. I spoke to
25 Sogebank in Haiti, in Cap-Haitien, and I spoke to

1 the assistant director, and I explained to him --
2 his name Ismael (inaudible). I explained to him the
3 issue we have, and here is what he proposed. He
4 said he will be willing to take 16 checks for
5 deposit only made out in the name of the victims,
6 and me flying there to Haiti, to the bank, and
7 depositing those checks by opening bank accounts for
8 each of the victims, them being present with an ID.
9 And once we have done that -- and he asked me which
10 bank the Court has, and I was able to find out it
11 was Bank of America.

12 Then the assistant director of Sogebank
13 said there would be no problem, that they do
14 business with Bank of America. He's willing to open
15 the account for all 16 kids -- or victims, your
16 Honor, and it will take four weeks for the checks to
17 clear. There will be no fees. That's where I'm at.

18 THE COURT: So, let me see if I've got
19 this straight. Because the account that the clerk's
20 office has the restitution in is a Bank of America
21 account, we don't even need to use Chase.

22 AGENT KHATTABI: That is correct, your
23 Honor, as long as the clerk issues 16 checks for
24 deposit in the name of each name of the victims, I
25 can go with those checks -- for deposit only, go to

1 Haiti, to Sogebank, have the victims open an account
2 with those checks to be deposited in their accounts.

3 THE COURT: All right, shall I hear from
4 anyone else who wishes to be heard on this
5 information?

6 MS. PATEL: Your Honor, this is Krishna
7 Patel. You had also asked me to confirm with the
8 clerk's office. The money is in a money market
9 account, interest bearing. The annual rate is .05,
10 and it was with Janel at the clerk's office that we
11 confirmed the money is in a Bank of America account.

12 THE COURT: Thank you. So, this would
13 not -- this would, A, require Agent Khattabi to go
14 there, B, would not provide a -- let me ask you:
15 The contemplation is that Agent Khattabi's plan is
16 just a one-shot deal?

17 AGENT KHATTABI: That is correct, your
18 Honor.

19 THE COURT: Is there some way -- you
20 remember we talked about potentially having
21 \$3,000 -- having -- no, \$4,000 or something
22 transferred per month and divided among the 16
23 accounts to come up with something like two hundred
24 fifty or three hundred dollars a month as a means of
25 kind of a protection against if they were to get

1 something stolen from them it wouldn't be the whole
2 amount. It would also provide some way to be used
3 to describe, for instance, to a landlord a
4 guaranteed steady flow of income and other benefits.

5 Given what you have found out, is there
6 some way to accomplish that objective as opposed to
7 the one-time deposit? And that certainly doesn't
8 contemplate you going down there once a month.

9 AGENT KHATTABI: I'm not sure, your
10 Honor. The only thing I can think of is Bank of
11 America and the clerk's office are willing to wire
12 money on a monthly basis to that account that would
13 be opened when I go there one time with maybe 16
14 checks of, let's say, \$100 each to open those
15 accounts. I'm not sure what the logistics are to
16 have Bank of America and the clerk's office sending
17 money on a monthly basis.

18 THE COURT: So, when you described how
19 this would work, you envisioned the clerk's office
20 issuing 16 checks drawn on the Bank of America
21 account and you would be taking those checks. So,
22 after the initial deposit, is there some way that
23 those checks can be transmitted? I mean, I assume
24 mailing them is not something we're talking about.

25 AGENT KHATTABI: No.

1 THE COURT: So the fee that Chase was
2 going to impose was to wire it. So that's going to
3 be a cost that even if the clerk's office wanted to
4 wire it, it would be incurred, a fee would be
5 incurred, right?

6 AGENT KHATTABI: That is correct, your
7 Honor.

8 THE COURT: Well, what do you think,
9 counsel?

10 MR. GRUDBERG: Your Honor, David
11 Grudberg. Perhaps I'm confused. It's not clear to
12 me -- I guess the question that I'm not sure I have
13 an answer to is whether the Bank of America account
14 that the court maintains and where the funds are
15 currently being held, whether that -- whether Bank
16 of America could accomplish a wire transfer and
17 whether the transaction costs associated with that
18 might be reduced in any way. I guess I'm not clear
19 why it would have to come from Chase.

20 THE COURT: I'm not sure why we started
21 out with Chase. Does anybody know? Oh, because
22 Chase has a relationship with Soge.

23 AGENT KHATTABI: That is correct.

24 MS. PATEL: Chase is the only U.S. bank
25 that we could find that has a relationship with

1 Sogebank. So the thought, David, had been to
2 somehow figure out some way to open the account and
3 get the money wired through Chase. What Rod was
4 able to learn this time was Sogebank would honor a
5 U.S. check. As you know, most foreign banks won't.
6 They will honor U.S. bank checks, and they will
7 certainly honor one from Bank of America. So, we
8 can now remove Chase out of this altogether.

9 So, the question now I think on the
10 table is do we do a one time opening and drop the
11 money in, or do we take the time to figure out what
12 the wire transfer cost would be from Bank of America
13 and whether the clerk's office would be willing to
14 do it, and do we set up some kind of payment plan.
15 Maybe we set up the checks once, deposit half of it
16 once and do one wire transfer, or maybe more than
17 one. I think that's kind of where we're at right
18 now.

19 And, your Honor, it may make sense just
20 to have someone from the clerk's office give us
21 their contact at Bank of America and we can find out
22 what the wire transfer fees are. We assume they
23 would be somewhat similar, and if that's the case,
24 you know, it might be worthwhile. I understand it's
25 still \$45 dollars for each child, which is very

1 meaningful for them, but in order to help them, you
2 know, kind of manage the money, it at least might
3 make sense to do half the money on the front end and
4 maybe do a wire transfer in six months or a year.
5 And I'm just throwing that out there as a thought.
6 I mean, 45 times 16 is --

7 MR. GRUDBERG: Is 720, I just did it,
8 which is pretty substantial transaction costs,
9 especially if we're talking about monthly transfers.
10 I'm wondering whether --

11 THE COURT: Yes, that's \$8,640 to
12 accomplish this purpose. That's absolutely not --
13 doesn't make any sense.

14 MR. GRUDBERG: Right. I guess my
15 feeling, your Honor, it would only make sense if the
16 government somehow could -- presumably being one of
17 Bank of America's more substantial customers, could
18 somehow prevail upon it to either drastically reduce
19 or waive wire transfer fees.

20 MS. PATEL: Right. And, your Honor, I
21 think, you know, for our issues, you know, because
22 the U.S. attorney's office has some ethical issues,
23 we can't specifically ask that it be done. We could
24 ask whether they have any programs in place.
25 Because we can't ask for favors like that. But I

1 don't know if the clerk's office because -- I don't
2 know if the clerk's office as a whole keeps money
3 with Bank of America, and particularly with
4 forfeiture or, you know, paying out of different
5 funds, if they have some flexibility to see if wire
6 transfers can be done without a cost, or very
7 minimal cost associated.

8 THE COURT: Well, the Court obviously is
9 in the same position -- or at least a position of
10 how to see what the bank would be able to do under
11 these circumstances. I will pursue who the contact
12 person is. I have an e-mail off right now.

13 Okay, so at a minimum we understand how
14 this will take place. It's going to require getting
15 all 16 people to the bank at the same time. Or did
16 you intend to do that over time, Agent Khattabi?

17 AGENT KHATTABI: Your Honor, I plan on
18 doing it probably in one day. You know, I'll set it
19 up first before going there where everybody will
20 show up at a certain time, not to have an influx of
21 people, and have the ID cards, and they will open --
22 each one of them would open an account with a
23 signature and provide an ID, and we'll have each one
24 have a check being deposited.

25 MS. PATEL: Agent Khattabi has spoken to

1 folks on the ground there, some adults, some other
2 folks on the ground who will be able to assist them,
3 and the folks at Soge obviously will be prepared to
4 handle all of this in a day or two and get it done
5 for us.

6 THE COURT: And what makes you think
7 this can be done safely all the way around?

8 MS. PATEL: Well, he's not moving with
9 money, he's going to be -- he's going to have checks
10 for deposit only.

11 THE COURT: I'm thinking about the young
12 -- the victims.

13 MS. PATEL: Yes.

14 AGENT KHATTABI: Well, the young
15 victims, your Honor, would not have access to the
16 money for four weeks. So, really, what I'm doing
17 there, I'm just going to be depositing those checks
18 to each one's account, and they won't even be able
19 to draw not even a dime for at least four weeks.

20 THE COURT: Who gets the float on that,
21 by the way? Sogebank?

22 MS. PATEL: I don't know if it's
23 Sogebank or Bank of America.

24 MR. GRUDBERG: I know who does.

25 MS. PATEL: I don't know.

1 THE COURT: Well, let's do this, if it's
2 satisfactory with you. There is not a perfect
3 solution on any account as to how to handle the
4 restitution, both impacted by the numbers of people
5 that may be potentially involved, the amount, the
6 relatively small amount of money that basically
7 precludes a project-based use of the restitution
8 money, but I think that the plan that Agent Khattabi
9 proposes is one that maximizes the money for the
10 victims and ensures that the accounts actually get
11 set up as intended with the money as intended. What
12 happens after that is, I suppose, something that we
13 can't control. I will make some inquiries to see if
14 it is at all fruitful to see if there is a way to
15 have Agent Khattabi not put the full amounts in the
16 accounts, but have them transmitted in some fashion
17 on a periodic basis, conceivably transmitting half
18 of it six months from now by wire; that is,
19 diminishing each account by \$45 may have, on
20 balance, some greater appeal than depositing the
21 entire amount at one time.

22 Do you have any views about that?
23 Assuming the total -- if it were to be the total
24 wire fees of \$720?

25 MS. PATEL: Your Honor, I think your

1 Honor was the one who actually had raised this
2 initially, and I think it's a very valid point, and
3 just knowing, you know, you have individuals who
4 probably aren't used to managing money, I think it
5 might be helpful to have them carry the money
6 through in a more meaningful way. I would -- you
7 know, my recommendation, I know \$45 for each of them
8 is a lot of money, but I think that it kind of
9 manages it a little bit for them. So, I think if we
10 could, I would rather do it in two separate phases,
11 maybe even push it out a year; in other words, do
12 the deposit and then a year later do the wire
13 transfer, and, you know, have that be a cost of \$45.
14 It keeps everybody -- it certainly keeps your
15 Honor and the clerk's office, you know, still
16 involved with this issue, as well as us, but I think
17 it's worthwhile. But, you know, I really will defer
18 to the Court on what makes sense on this.

19 THE COURT: Well, just think, with the
20 .05 percent interest we're getting we can just
21 practically anticipate covering 25 percent of one
22 wire fee. Okay, let me explore this and get back to
23 you all as soon as possible, assuming that there is
24 no objection to, at a minimum, plan A, which is
25 having Agent Khattabi take the entire sum down there

1 and set up the individual accounts with the
2 individuals, and that there is no objection, if it
3 appears feasible to doing this in a two-phase
4 process of an initial deposit and then a wire
5 transfer nine to 12 months later. Okay, let me see
6 if there is anything different about how Bank of
7 America would handle this.

8 Anything else?

9 MS. PATEL: No, your Honor.

10 MR. GRUDBERG: I just had one point for
11 Agent Khattabi, your Honor, on the mechanics of
12 setting up the account. Do we know that all of
13 these 16 young men have appropriate identification?
14 Because it was my experience down there that that
15 was far from a given, and I'm just trying to
16 anticipate potential problems that could arise in
17 the opening of accounts.

18 AGENT KHATTABI: Not yet, Dave. I made
19 sure of that, and I reached out to Haiti to make
20 sure that they all have ID. It is my understanding,
21 I got back an e-mail from Haiti saying they all have
22 IDs.

23 THE COURT: Okay, good.

24 MS. PATEL: And with respect to that,
25 your Honor, we have asked for a formal -- we sent

1 down the names to Robinson to confirm the spellings
2 of each name on their ID to compare to make sure the
3 checks when they're cut are cut correctly. Some of
4 them who we brought to court obviously have
5 passports even. So what we can do is get that list
6 out to your Honor and to Mr. Grudberg with the exact
7 way that their names appear on the ID so we don't
8 mess that up, and as we get closer to having the
9 Court issue an order, my only request is that the
10 Court maintain the names under seal; so, you know,
11 attached to Exhibit A under seal are the 16
12 individuals for whom restitution is going to be
13 ordered.

14 THE COURT: All right, Mr. Khattabi, how
15 much lead time do you need before you can go?

16 AGENT KHATTABI: Well, your Honor, I'm
17 at your service. I mean, the month of August is
18 pretty bad because in Haiti there are a lot of them
19 on vacation, and my understanding is the assistant
20 director I've been dealing with is taking off in the
21 month of August.

22 THE COURT: So, we want to do it before
23 the end of July.

24 MR. GRUDBERG: Or in September, whatever
25 your Honor decides.

1 THE COURT: Let's work for July. Let's
2 assume that August is difficult, and let's see how
3 we can do that. All right, so I will get the exact
4 names for the list and a proposed order, and I will
5 independently see if there is anything other than
6 the one time deposit, or the one time deposit of
7 50 percent and then incurring the cost of up to \$45
8 per transfer for one more wire transfer of the
9 remainder. Okay. All right, that's good. Anything
10 else?

11 MS. PATEL: Nothing further from the
12 government, your Honor.

13 MR. GRUDBERG: No, your Honor.

14 THE COURT: Okay, good-bye.
15

16 I certify that the foregoing is a correct
17 transcript from the record of proceedings in the
18 above-entitled matter.
19

20 1/05/12

21 Date

22
23 /S/ Sharon Montini

24 Official Reporter
25

EXHIBIT 8

107
UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED

2011 JUL 15 A 10:12

UNITED STATES OF AMERICA

U.S. DISTRICT COURT
Case No. 3:09cr207(JBA) HAVEN, CT

v.

DOUGLAS PERLITZ

RESTITUTION ORDER

WHEREAS, by plea agreement dated August 18, 2010, the parties agreed that the Court must order that defendant DOUGLAS PERLITZ make restitution under 18 U.S.C. § 3663A;

WHEREAS the defendant agreed to make restitution at the time of sentencing on December 21, 2010;

WHEREAS, at sentencing on December 21, 2010, the Court imposed restitution and ordered that a hearing would be held within 90 days to determine the amount of restitution;

WHEREAS defendant surrendered certain assets within his possession and control and caused those assets to be surrendered to the Clerk of the Court;

AND WHEREAS, the Court held hearings on March 7, 2011, June 30, 2011 and July 7, 2011, to hear oral arguments to determine the amount of restitution and to establish a procedure to provide restitution monies to the victims in Haiti;

THEREFORE, IT IS HEREBY ORDERED pursuant to 18 U.S.C. § 3663A that the amount of \$48,879.29 that has been deposited with the Clerk of the Court, plus any interest, be distributed

pro rata to the sixteen victims listed in Exhibit A¹, who at the time of sentencing the Court determined were all victims in the above captioned matter, in the following amounts and sequence:

- (1) The Clerk of the Court is directed to issue sixteen separate checks in the amount of \$1,000 to each of the individuals listed in Exhibit A; each check should be clearly marked "For Deposit Only" and the check should be provided by hand to ICE Special Agent Rod Khattabi;
- (2) ICE Special Agent Rod Khattabi will assist the sixteen victims to open sixteen individual bank accounts into which the checks are to be deposited at a bank known to the Court and to the parties in this case no later than December 1, 2011 and will inform the Clerk of the Court of the information for wiring additional sums to these bank accounts once the bank accounts have been opened;
- (3) The Clerk of the Court is directed to make two sets of wire transfers of \$1,000 to each of the sixteen accounts 7 months and 14 months after the bank accounts have been opened by the sixteen victims listed in Exhibit A; and,
- (4) After payment of all wire transfer fees incurred, the Clerk is directed to add pro rata to the second wire transfers any remaining funds or interest in the restitution account.

¹ The names of the sixteen individuals will remain under seal for the reasons set forth in the protective order imposed by this Court on or about February 23, 2010.

FINALLY, IT IS ORDERED that this Order is entered without prejudice to either party's right to seek a revision of the Order by appropriate motion to the Court.

IT IS SO ORDERED this 14th day of July 2011, at New Haven, Connecticut.


JANET BOND ARTERTON
UNITED STATES DISTRICT JUDGE